IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.296 OF 2005
IN
SUMMARY SUIT NO.2767 OF 2002

Union of India ..Plaintiff

Vs.

Arab Financial Services Co.& Ors. ..Defendants

Ms.Lambey i/b S.S.Sarkar for the plaintiff

Mr.Leon Samuel i/b M/s.Advani and Co. for the defendant no.1

Mr.Kumar Tolani i/b M/s.Nankani & Associates for defendant no.2

Mr.Raj Patel i/b Hariani & Co. for defendant no.3

CORAM : S.U.KAMDAR, J
DATED : 19TH JANUARY, 2006

P.C.:

1. The present suit is filed as summary suit for the recovery of sum of US Dollars 70,000/- equivalent to Rs.33,95,000/- with interest thereon @ 18% p.a. Suit has been filed by Union of India for recovery of aforesaid amount on the ground that there was a raid on a ship and on the said raid the travellers cheques of huge amount were seized, which were unauthorised and illegal and were sought to be smuggled out of the country. Thereafter the proceedings were initiated by the custom

authorities against the various parties including the defendants herein. By an order dt.23.6.98 Customs Authorities has confiscated the travellers cheques of US Dollars 70,000 and thus, they are the holder by virtue of confiscation of the said travellers cheques. Defendant no.1 is a member of VISA and who is rendering financial services. Defendant no.1 is an authority who has issued the said Travellers Cheques which has been confiscated by the plaintiff, the Customs Authorities herein. The present suit is filed for recovery of an amount of travellers cheques held by customs authorises in their possession by virtue of confiscation order. Under the provisions of section 126 of the Customs Act 1962, all the confiscated property vest in the Central Government and thus the Central Government has become the owner and holder of the said travellers cheques which are confiscated under the provisions of the Customs Act, 1962. On the basis of the said confiscation order, the plaintiff has demanded money from the defendant to make payment of travellers cheques of US Dollars 70,000.

2. Defendant no.1 is sued because it is the

issuing authority and is obliged to honour the said travellers cheques as and when they are presented. Defendant no.2 is an agent of defendant no.1 and is sued in his capacity as an agent. Defendant no.1 has contended that they are not liable to make payment of the said Travellers Cheques which are presented by the plaintiffs. Firstly, because the plaintiffs are not the holder in due course of the said travellers cheques as required for the purpose of the same being encashed by the plaintiff herein and secondly in any event defendant no.1 did not receive any consideration at the time of issuing the said travellers cheque and therefore defendant no.1 is not liable to make payment thereof. Defendant no.2 has contended that he is not the issuing authority nor in any way concerned or connected with the travellers cheques. He is merely an agent of defendant no.1 and it is the travellers cheques which are issued by defendant no.1. Defendant no.1 being principal is already sued and defendant no. 2 who is merely an agent in India of defendant no.1 cannot be held liable in respect of the said confiscated property.

3. I have considered the case and defence raised by the defendants. In so far as defendant no.1 is concerned, the defence raised that plaintiff is not the holder in due course of the said travellers cheques cannot be accepted because of the statutory provisions under section 126 of the Customs Act 1962 that the property i.e.travellers cheques vest with the Government once the confiscation order is passed. There is no dispute that the Travellers Cheques are confiscated and plaintiff being Union of India bas become entitled to the amount of the said travellers cheque as holder by virtue of the provisions of the Customs Act. It is not necessary for claiming the amount under travellers cheque by the plaintiff that plaintiff must be holder in due course as defined under the Negotiable Instruments Act. By virtue of legal confiscation which is created under section 126 of the Customs Act title is vested in the plaintiff and thus in my opinion plaintiffs are entitled to amount covered by the said travellers cheques. Defendant no.1 being issuing authority cannot escape the liability on the ground that plaintiff is not the holder in due course.

4. The next contention advanced by defendant no.1 that they have not received any consideration for issuance of the said travellers cheques is equally without any merits.It is well settled that once travellers cheques are issued by bank or any financial services they are liable to honoured the same as and when when they are presented unless a case of fraud is made out. There is no such defence of fraud raised by the defendant no.1 in the present case. In so far as defence of defendant no.2 is concerned, defendant no.2 is admittedly not an issuing authority and has acted as an agent of defendant no.1. In that light of the matter, I am of the opinion that whereas defendant no.2 is entitled to unconditional leave to defend defendant no.1 must be put on condition. Defendant no.1 is accordingly directed to deposit in this court as condition to leave to defend an amount of Rs.30 lacs within 4 weeks from today, failing which plaintiff will be entitled to decree as against defendant no.1. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised

Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed by defendant no.1 within four weeks from the date of deposit of the said amount. The defendant no.2 to file a written statement within 4 weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.